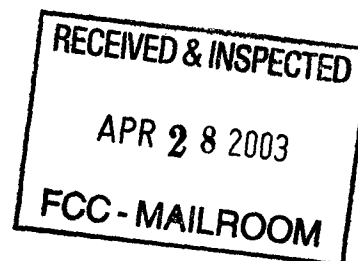


3213 Landsdowne Drive
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April 22, 2003

K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau
Federal Communications Commission
Washington, D.C. 20554



Confirmed

APR 29 2003

Distribution Center

Thank you for responding to Senator Biden's inquiry on my behalf. Mr. Patrick Allen of Senator Biden's office has forwarded a copy of your response to me.

Upon reading your response, there are several points I feel require further clarification. For convenience, these are referenced to the numbers used in the response.

4. Why does the FCC not specifically inform callers that their information will be associated with the calling phone number, and maintained on file?

Your response indicates that callers are informed of this fact by the pre-announcement that informs them that the call may be monitored. In common usage, I consider the term "monitor", with regard to a phone conversation, to be an activity taking place in real-time and only for the duration of the call. In many call centers, monitoring the call is performed by supervisory staff using "service observing equipment" to determine if the call center agent is performing the job as required. The phrase "monitored or recorded" is commonly used to indicate that information, usually in the form of an audio recording, may be maintained after the call has ended.

Under your interpretation of the term "monitored", it would appear that the term includes the recording of information for later review, and therefore any pre-announcement used to answer a call which states that the "call may be monitored" implies that both parties have been granted permission to record the information from the call without limitation, including the use of an audio recording device, without obtaining further permission. **Is this correct? If not, please explain the difference between monitoring and recording.**

Does the FCC, during calls to the 888-CALL-FCC number, specifically grant permission for the caller to record information exchanged during the call by use of the pre-announcement phrase "...call may be monitored".

In referring to Webster's, I find the definitions given for "monitored" correspond with my common usage interpretation. **Is there a different legal interpretation to the meaning**

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of "monitoring a call" given in federal law or regulation, and if so, could you please provide a citation?

Don't you think it would be clearer if you specifically informed callers that their calling number had been captured and would be maintained on file?

If I am correct in my interpretation, question 4 remains unanswered.

6. If such a call is made, and Caller ID blocked, if the recipient initiates a "call trace" which reports the calling number to the Local Exchange Carrier (LEC), what agency, as part of enforcement will request that the LEC provide the number to the agency for their investigation?

And

7. If it is not possible to obtain the calling number via Caller ID, and no agency will request the calling number from the LEC after a trace, how is it possible to effectively enforce this section of code?

Your response to (6) does not answer the question, "what agency." You merely indicate that the procedures used to investigate vary based on the agency, and further discuss how the information may be obtained by an unspecified agency.

Your response to (7) indicates that effective enforcement is the result of the FCC's complaint process.

I understand that the FCC does not adjudicate individual complaints. I have attempted to use the FCC's complaint process on several occasions to file complaints for both live and prerecorded telemarketing calls, which I believe were in violation of Federal Code. In all cases, Caller ID was not provided (i.e. the call display showed "Out of Area") and the caller/recording did not provide a call back number or other positive identification. I initiated a call trace for these calls.

However, upon contacting the FCC, I was told in all cases that the FCC would not request the call trace information unless a volume of complaints against the same telemarketer was already in existence.

The question then remains: If the FCC, or other appropriate and as yet unnamed agency, does not request the call trace information, and the telemarketer does not provide the information, **how is it possible to identify and count the number of complaints against a specific telemarketer so as to determine whether a pattern of violations exists and merits enforcement action in these situations?**

Why won't the FCC request the call trace information as part of the process of recording the complaint instead of the later process of enforcement?

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I appreciate the copies of enforcement documents that you included in your response and feel certain that the FCC Enforcement Bureau does take actions to enforce the code. However, while the documents state the potential violations for not providing some of the identifying information, it is not clear that these cases involved a total lack of verbal and Caller ID information.

Would you please provide references to FCC enforcement actions against telemarketers that did not provide ANY positive verbal or Caller ID identifying information for the calls that were the subject of complaints?

In such cases, I would be especially interested in learning how the FCC determined who the offending telemarketer was, how they were identified in complaints, and how the FCC determined that a sufficient number of complaints was received against the telemarketer to merit action, without tracing the calls.

These cases would more closely resemble the situations I have experienced.

Finally, please advise as to how I can prevent receiving multiple calls from the same telemarketer which:

- Does not present identifying information to my Caller ID unit ("Out of Area").
- Is either from a live agent who only gets on the line after I say the word "hello" once and then wait several seconds during silence, or is a recording
- Is not from any company with which I have an existing business relationship
- Is to advertise the availability of a commercial product or service
- If from a live agent, the agent only provides a first name and a generic company name (e.g. "Travel Center"), and refuses to provide a phone number, address, or any other information, and if from a recording the information is not included in the recording. Of course, I wouldn't do business from such a company, but I would like them to place me on their do not call list.
- If a recording, I am instructed to press a key to speak with an agent. If I do not do so, the call is reattempted.
- The call is reattempted if any response other than "hello" followed by silence is given upon answering.
- When speaking with an agent, I request my number be placed on their do not call list, but the call is reattempted multiple times anyway (same recording or "pitch")
- When speaking with a live agent, I attempt to get the company's address by saying that I would like to send a check in payment and ask for the address to remit payment. The response is that the offer is only valid if I give them my credit card number over the phone at that time. (Yes, I understand that I shouldn't do this, and I don't).

I have attempted the following methods of dealing with these situations, which were suggested by your agency and others, and which have met with no success:

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- Subscribe to the Direct Marketing Association's Telephone Preference Service. I did this. The number of calls increased. This is only a voluntary method and does not insure compliance.
- Block incoming calls where the Caller ID is blocked. This service in my area is known as anonymous call rejection. It will only reject calls where the Caller ID is "Private", not "Out of Area". This does not apply here.
- Block the specific number that is calling you. The phone company service which permits this is limited to a small number of phone numbers, you can not automatically capture the calling number if "Out of Area", or "Private" to add it to the list, and of course these calls show as "Out of Area", so it is not possible to manually add them. Even if you had the Caller ID, a large telemarketer could be displaying a different number on each call, defeating this method.
- Don't answer calls if the Caller ID is "Out of Area". Unfortunately, there are legitimate calls I need to receive which are sometimes identified in this manner. It is not possible to distinguish these calls from the others. Such calls can originate from phone cards, cell phones, large companies with which a relationship exists, and other sources. These legitimate calls will continue even after implementation of proposed FCC and FTC regulations preventing telemarketers from blocking caller id information. Of course, those telemarketers that don't provide identification now in violation of the law will be unlikely to do so after implementation of the new regulations.
- Screen calls with an answering machine. These companies are using predictive dialers and can detect an answering machine. They just hang up and call again later. While most telemarketers will discontinue attempts after a reasonable number, those that make the calls described above usually persist for a very long time. Occasionally, I have attempted to fool them by just recording "Hello" as the greeting. This often does not work, and in addition disrupts my telephone service since many legitimate callers are confused or annoyed by the greeting. I have even used a Special Information Tone (SIT) – Operator Intercept recorded at the beginning of the greeting, to cause predictive dialers to remove the number from the list. This is similar to the concept behind the Telezapper product, but more effective since it is the complete three MF tone sequence. Aside from the fact that it again confuses legitimate callers, it does not work for the type of calls described above because they apparently set up their predictive dialers to ignore such signals.
- Ask the company to place you on its do not call list. Request is not honored.
- Use a phone company service that requires caller to identify themselves before your phone rings. This service only recently became available in this area. However, prior to that time, I used an IVR system to accomplish the same thing

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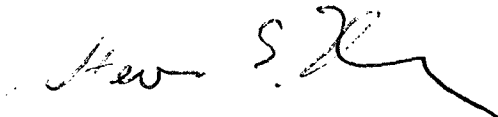
for calls with Caller ID "Out of Area". It again confused and annoyed legitimate callers, extended hold times, and degraded my service.

- Do not list your number, or provide it to companies for rebates, contests, or promotions. I have several numbers, some of which are not listed, and which are never provided for rebates, etc. These types of calls are still received on these lines (as well as the listed numbers), indicating that the numbers are being randomly dialed.

Even if these methods worked, it would not change the fact that some telemarketers are violating the current regulations with impunity because they are not identifying themselves.

Worse yet, as wireless phone rates come down, even small telemarketers may be encouraged to cloak their identity by using cell phones to make calls. According to the wireless carriers I have spoken with, their systems do not even provide the capability to trace calls, let alone require that Caller ID information be provided or displayed as "Private". When wireless callers in my area block their caller ID ("Private") it displays to wire line phones as "Out of Area", thereby defeating anonymous call rejection.

Thank you. I look forward to your prompt and thorough response.



Steven E. Kleiner

Cc: The Honorable Joseph R. Biden, Jr.